

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

POLY-AMERICA L.P., a Texas limited partnership,	)	
	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
VS.	)	3:08-CV-2224-G
	)	
STEGO INDUSTRIES, L.L.C.,	)	
	)	
Defendant.	)	

**FINAL JUDGMENT**

After hearing and reviewing evidence presented during a two-day bench trial, this court entered its memorandum opinion and order containing its findings of facts and conclusions of law (docket entry 121). For the reasons stated therein, the court found (i) the trademark reflected in Federal Registration No. 2,790,352 is functional and not legally protectable, and (ii) the plaintiff, Poly-America L.P. ("Poly America") did not prove its fraudulent procurement claim by clear and convincing evidence. By reason of this finding, the parties are entitled to a final judgment as follows:

It is therefore **ORDERED, ADJUDGED and DECREED** that:

1. The trademark reflected in United States Trademark Registration No. 2,790,352, the color yellow as applied to the entirety of any plastic sheeting used in the construction industry as a vapor barrier and as a vapor retarder, is functional and not legally protectable.

2. The trademark reflected in United States Trademark Registration No. 2,790,352 is not registrable on either the principal or supplemental register of the United States Patent and Trademark Office.

3. In accordance with the power of this court under 15 U.S.C. § 1119, the Director of the United States Patent and Trademark Office is hereby ordered to cancel United States Trademark Registration No. 2,790,352.

4. Stego Industries, LLC (“Stego”) has no common law trademark rights to the color yellow as applied to the entirety of plastic sheeting used in the construction industry as a vapor barrier and as a vapor retarder.

5. Poly-America has not infringed United States Trademark Registration No. 2,790,352 or any of Stego’s common law trademarks relating to the color yellow as applied to the entirety of any plastic sheeting used in the construction industry as a vapor barrier and as a vapor retarder.

6. Stego, its agents, employees, and attorneys are enjoined from initiating or pursuing infringement litigation or threatening such litigation against Poly-America, or any of its customers, dealers, agents, servant, or employees, for

infringement of United States Trademark Registration No. 2,790,352 or for infringement of any common law trademark rights arising out of a yellow color applied to plastic sheeting used in the construction industry as a vapor barrier and as a vapor retarder.

7. Poly-America is entitled to its costs of court pursuant to 28 U.S.C. § 1920.

8. Poly-America has failed to prove by clear and convincing evidence its declaratory judgment claim that Stego fraudulently procured United States Trademark Registration No. 2,790,352.

The court retains jurisdiction to hear post-judgment motions, if any.

August 15, 2011.

  
A. JOE FISH  
Senior United States District Judge